

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 65]

Fishing; Special Fishing Regulations

The Fish and Boat Commission (Commission) proposes to amend Chapter 65 (relating to special fishing regulations). The Commission is publishing this notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

A. Effective Date

This proposed rulemaking, if approved on final-form rulemaking, will go into effect upon final-form publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's website at www.fishandboat.com.

C. Statutory Authority

The proposed amendment to § 65.14 (relating to catch and release fly-fishing only) is published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. Purpose and Background

This proposed rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

E. Summary of Proposal

In an ongoing attempt to simplify regulations, the Commission is continually looking at ways to improve upon current regulations. One area that has come into question recently is the 18-foot maximum length of leader material or monofilament line allowed in catch and release fly-fishing only areas.

In examining this question, it was brought to the Commission's attention that this limitation also excludes several acceptable fly-fishing practices such as European Nymphing. Law enforcement staff indicate that rarely is the length of leader material measured as it does not create significant problems streamside.

Based on these findings, the Commission proposes to amend § 65.14 to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will not have adverse fiscal impacts on the Commonwealth or its political subdivisions. This proposed rulemaking will not impose new costs on the private sector or general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rule-

making to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000 within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at www.fishandboat.com/reg comments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,
Executive Director

Fiscal Note: 48A-277. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 65. SPECIAL FISHING REGULATIONS

§ 65.14. Catch and release fly-fishing only.

* * * * *

(b) It is unlawful to fish in waters designated and posted as catch and release fly-fishing only except in compliance with the following requirements:

* * * * *

(2) Fishing shall be done with tackle which is limited to fly rods, fly reels and fly line with [**a maximum of 18 feet in**] leader material or monofilament line attached. Spinning, spincast and casting rods and reels are prohibited.

* * * * *

[Pa.B. Doc. No. 17-1519. Filed for public inspection September 15, 2017, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 62]

Natural Gas Distribution Company Business Practices; Advance Notice of Proposed Rulemaking

Public Meeting held
August 31, 2017

Commissioners Present: Gladys M. Brown, Chairperson, statement follows; Andrew G. Place, Vice Chairperson; David W. Sweet; John F. Coleman Jr.

Proposed Rulemaking: *Natural Gas Distribution Company Business Practices; 52 Pa. Code § 62.225; L-2017-2619223*

Advance Notice of Proposed Rulemaking Order

By the Commission:

The Commission adopts this Advance Notice of Proposed Rulemaking Order to solicit comments about

amending and adding to our regulations at 52 Pa. Code § 62.225. These regulations address the release, assignment and transfer of capacity among Natural Gas Distribution Companies (NGDCs) and Natural Gas Suppliers (NGSs). The proposed regulatory changes are the result of the Commission's Natural Gas Retail Markets Investigation (RMI) and are intended to improve the competitive market by revising how capacity is assigned and addressing related issues including penalties and imbalance trading.

History

2005 Search Investigation:

In its October 2005 Report to the General Assembly on Competition in Pennsylvania's Retail Natural Gas Market, Docket No. I-00040103, the PUC determined that there was not effective competition in the market based on the low participation rate of NGSs in the market. The lack of uniformity among NGDC business standards, operating rules, and business barriers was identified as a possible barrier to market entry and participation. A collaborative of stakeholders (Stakeholders Exploring Avenues to Remove Competitive Hurdles—SEARCH) was convened to discuss various ways to increase effective competition. The SEARCH Report proposed that some standardization of business rules among NGDCs could increase the number of NGSs participating in the statewide retail market. The Commission accepted this proposal in its Final Search Order and Action Plan, and directed that a proposed rulemaking be initiated to revise and, when feasible, to standardize NGDC business practices, operating rules and supplier coordination tariffs, including:

- The elimination or revision of inflexible or unreasonable nomination rules and delivery requirements.
- The adoption of wider tolerance bandwidths, where justified, and the elimination or revision of other rules affecting system flow that do not negatively impact system reliability.
- The revision of unreasonable cash out rules and penalties.
- The adoption of best business practices related to information exchange and data transfer, including the possible standardization of NGDC business practices by the adoption of certain NAESB [North American Energy Standards Board] practices.
- The use and standardization of Electronic Bulletin Boards.

See Final SEARCH Order entered September 11, 2008 at Docket No. I-00040103F0002.

2009 Proposed Rulemaking Order:

On May 1, 2009, the Commission issued a proposed rulemaking consistent with the direction provided in the Final SEARCH Order.¹ The proposed rulemaking order set forth business practices and standards governing the business relationship between NGDCs and NGSs in regard to financial transactions, communications (uniform supplier tariffs, information and data exchange) and system operational rules for the management of gas on an NGDC's system (allowing for imbalance trading, setting a tolerance band at 10%, cash out and penalties, nominations and directing NGDCs to provide full access to capacity assets).

¹ See Proposed Rulemaking: Natural Gas Distribution Company Business Practices; 52 Pa. Code §§ 62.181–62.185, Docket L-2009-2069117 (Order entered May 1, 2009).

The order was published in the *Pennsylvania Bulletin* on October 17, 2009 at 39 Pa.B. 6078. The public comment period ended December 16, 2009. Seventeen parties filed comments;² eight parties filed reply comments.³

Upon careful review and consideration of the comments the Commission, in a December 1, 2011 Order Withdrawing Rulemaking⁴ acknowledged that the rulemaking suffered from a lack of supporting data to demonstrate the need for standardizing business practices and the costs relating to various proposals in the rulemaking. We also acknowledged the concerns of some of the parties about the need to engage stakeholders in a collaborative process. Consequently, the Commission discontinued the rulemaking and directed that a new rulemaking proceeding to review NGDC business practices and standards be initiated at a future date after further collaborative processes.

2015 Natural Gas Retail Markets Investigation:

The opportunity for further collaborative processes arose as a result of the Commission, on December 18, 2014, issuing the Final Order in the Investigation of Pennsylvania's Retail Natural Gas Supply Market (Gas RMI Final Order)⁵ announcing specific topics and issues that were to be investigated (Natural Gas RMI). The investigation was intended to examine several aspects of the competitive natural gas market to see what can be done to improve the market for the ultimate benefit of consumers. Through the Gas RMI Final Order, we outlined our priorities and finalized specific action plans to be undertaken by OCMO, including the establishment of working groups and our intent to propose regulations on specific issues. Included in these priorities was a review of various natural gas operational issues including assignment of capacity and use of storage assets, system balance, tolerances, and penalties, creditworthiness requirements, standardization of supplier tariffs among NGDCs, and electronic data protocols. OCMO was directed to explore these issues and provide recommendations to the Commission.

OCMO convened a collaborative working group (Retail Market Investigation Stakeholder Group) to address the following issues: assignment of capacity and use of storage assets; nondiscrimination in access points on NGDC systems; system balance, tolerances and penalties; and creditworthiness requirements. The Retail Market Investigation Stakeholder Group included representatives from the NGDCs, NGSs, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA) and other interested parties. OCMO utilized various methods, including conference calls, requests for comments on position papers and data requests, to collect information and promote discussion on these topics.

² Comments were filed by the Office of Consumer Advocate (OCA), the Office of Small Business Advocate, National Fuel Gas Distribution Corporation (NFG), Retail Energy Supplier Association, Columbia Gas of Pennsylvania (Columbia), Equitable Gas Company, PECO Energy Company, Peoples Natural Gas Company, UGI Distribution Companies, Agway Energy Services, LLC, Gateway Energy Services Corporation, and Vectren Retail, LLC, Interstate Gas Supply, Dominion Retail, Inc., Shipley Energy Company, National Energy Marketers Association, Independent Oil and Gas Association of PA (IOGA), Valley Energy, Inc., Philadelphia Gas Works, and Agway Energy Services, et al., the Energy Association of Pennsylvania (EAP), and Industrial Customer Groups, including Industrial Energy Consumers of Pennsylvania, Central Penn Gas Large Users Group, Columbia Industrial Intervenor, Philadelphia Area Industrial Energy Users Group, Philadelphia Industrial and Commercial Gas Users Group, the PNG Industrial Intervenor and the UGI Industrial Intervenor.

³ Reply comments were filed by OCA, NFG, RESA, IOGA, EAPA, Industrial Customer Groups, Columbia, and Dominion Peoples.

⁴ See Proposed Rulemaking: Natural Gas Distribution Company Business Practices; 52 Pa. Code §§ 62.181–62.185, Docket L-2009-2069117 (Order entered December 1, 2011).

⁵ See Investigation of Pennsylvania's Retail Natural Gas Supply Market, Docket No. I-2013-2381742 (Order entered December 18, 2014).

On June 29, 2015 and July 8, 2015, the Retail Market Investigation Stakeholder Group discussed system balancing, tolerances and penalties. The agenda included discussion of the following items:

1. Scheduling/nomination provisions.
 - a. Identified problems or constraints/opportunity for improvement.
 - b. Best practices.
 - c. Could standardization work?
 - d. What avenues are available to improve the market?
 2. Pooling fees.
 - a. Identified problems or constraints/opportunity for improvement.
 - b. Best practices.
 - c. Could standardization work?
 - d. What avenues are available to improve the market?
 3. Imbalance trading.
 - a. Identified problems or constraints/opportunity for improvement.
 - b. Best practices.
 - c. Could standardization work?
 - d. What avenues are available to improve the market?
 4. Cash-out provisions.
 - a. Identified problems or constraints/opportunity for improvement.
 - b. Best practices.
 - c. Could standardization work?
 - d. What avenues are available to improve the market?
- A follow-up conference call was held on July 29, 2015 where the agenda included the following topics:
1. Cash-out provisions.
 - a. Identified problems or constraints/opportunity for improvement.
 - b. Best practices.
 - c. Could standardization work?
 - d. What avenues are available to improve the market?
 2. Tolerance Bands.
 - a. Identified problems or constraints/opportunity for improvement.
 - b. Best practices.
 - c. Could standardization work?
 - d. What avenues are available to improve the market?
 3. Pooling Fees.
 - a. Do current pooling fees need to be revised?
 - b. What factors should be considered? NGDCs handle pooling fees differently, is there a model NGDC within PA that could be applied statewide? Pros and cons to a single methodology.
 4. Imbalance Trading.
 - a. Is imbalance trading needed for choice programs? What are some of the benefits or challenges with imbalance trading for choice? Reliability, costs, administration, and impact to shopping.

b. Does anyone in PA allow trading between choice and transportation? If so, how does it work?

c. Do tolerance bands fit in or change the dynamic? Is there a model worth exploring?

5. Penalties.

a. What is a reasonable penalty level during normal operation?

i. How should it be structured or what should it be based upon? Market based with multiplier? (i.e., 125% time market price)? Risk based—what are the risks and how should risk be incorporated? Flat penalty (i.e., \$ per Mcf/dth)? Cost plus penalty?

ii. Can any penalty structure be applied across the state?

iii. How do other provisions (i.e., imbalance trading, cash outs) impact penalty levels?

b. Penalties should be higher during extreme conditions, but do penalties during extreme conditions need to be explored?

Capacity assignment was the subject of a conference call on August 5 that discussed the following:

1. Assignment of Capacity.

a. Constraints or opportunity for improvement.

b. Best practices within Pennsylvania, across the country and other industries.

c. Is mandatory assignment of capacity needed? Can capacity match customer load on a timely fashion? How is nondiscrimination ensured? Are current Laws and regulations sufficient to govern the market?

d. What avenues are available to improve the market?

2. Assignment of Storage.

a. Differences across Pennsylvania.

3. Capacity release and revenue sharing.

a. Constraints or opportunity for improvement.

4. Interplay of risk versus reward for all parties.

These topics were discussed again during a call on August 19, 2015, along with a discussion of access points. These discussions culminated in an OCMO staff discussion document that was provided to the Retail Market Investigation Stakeholder Group on September 23, 2015.

Discussion

We thank the stakeholders for their helpful participation throughout the Natural Gas RMI process and for their input and informal comments. We have carefully considered the stakeholder discussions and comments and used this advice to develop the following proposals that are intended to further our goal of improving the competitive natural gas market to the ultimate benefit of consumers.

I. Uniform Capacity Costs For All Customers

Capacity is generally released to NGSs to serve customers participating in the retail competitive natural gas market. This release can occur in different ways, but the cost of the capacity release is generally based upon the system average cost of capacity. In most service territories, an NGDC's capacity releases for shopping customers are in turn paid for by the NGS providing service. During the Gas RMI process there was discussion surrounding fair use and payment for capacity. In particular, NGDCs cited risks from possible NGS default and the ability to

recover costs, while NGSs questioned the feasibility of peak day designs or unfettered access to all capacity assets as barriers to the market.

However, the Peoples Natural Gas Company (Peoples) releases capacity assets to the NGS like all other NGDCs, but instead of the NGS paying for it, all customers pay the average system cost of capacity (regardless of their participation within the market). While mathematically this difference is identical (i.e., the NGDC's cost of capacity is reimbursed by either customers or NGSs in full), this structure could offer a benefit to all market participants. Therefore, the Commission proposes that the Peoples' approach to capacity payment should be replicated across the Commonwealth.

A. *Benefit to the Market*

A possible benefit to the market is risk reduction. Both the NGDC and NGS have risk associated with the payment for capacity. From the NGDC's perspective, the potential for non-payment by NGSs could place undue burdens on the utility. NGDCs do not earn a return on their efforts for the procurement of gas (see, 66 Pa.C.S. § 1318) and therefore any used assets could be a liability to the utility. Therefore, unpaid NGS capacity payments would fall on customers (in this case non-shopping customers) and in many ways would not be fair or equitable if shopping customers imposed increased costs on non-shopping customers.⁶ While the likelihood of this happening is low, having customers pay for their capacity, regardless of shopping status, would eliminate any such threat to NGDCs and its customers.

This proposal could also reduce risk for NGSs. Ultimately, an NGS must pay for capacity and then recover those costs from customers while attempting to outperform default service, provide value added services, and earn profits. By eliminating the need for NGSs to pay for capacity upfront or recover a certain dollar amount to break even, the NGS may be more willing to offer innovative or lower priced services. While the NGS must still compete on price of gas and utilization of assets, it is given a little more freedom from having to beat the NGDCs system weighted average. Not all capacity is created equal and certain capacity bundles for customers could be less lucrative than the system weighted average, while other capacity resources may be more appealing. By eliminating the mismatch of payment for capacity versus its worth, the NGS's business model may be able to focus more on providing value added or lower priced services with less risk.

This change could reduce the financial barrier for entry into the market. By reducing the upfront capital required to begin service, it may be possible for new participants to enter the market. However, certain other financial requirements will remain in effect such as creditworthy standards imposed by NGDCs and identified in 52 Pa. Code § 62.111.

B. *Benefit to Customers*

Customers generally benefit from a more competitive marketplace with lower prices, product diversity, or other such offerings. As highlighted above, there may be clear benefits to the market that may lead to additional offerings or services to customers. In addition, all residential customers would pay for the capacity of the system. System reliability and stability is ultimately the concern of all customers and therefore, such factors like peak day

should be borne by all customers fairly and equitably with no regard to shopping or non-shopping status.

C. *Proposed Regulation*

An excerpt taken from Peoples Natural Gas Company LLC's Supplier's Tariff highlights the program design the proposed regulation is attempting to replicate:

Consistent with FERC rules and regulations for capacity releases under state retail choice programs, upstream pipeline firm transportation capacity held by the Company shall be assigned to the NGS as agent for the customers of the NGS's Priority-One Pool. The assignment shall be structured as a zero cost release of capacity provided, however, that the NGS should be responsible for paying all usage based pipeline charges. . .⁷

The Commission proposes that applying Peoples' capacity payment mechanism statewide creates immediate and potentially lasting benefits for competition, including non-shopping customers. To accomplish this standardization the Commission proposes the following change to its regulations:

§ 62.225. Release, assignment or transfer of capacity.

(a) An NGDC holding contracts for firm storage or transportation capacity, including gas supply contracts with Commonwealth producers, or a city natural gas distribution operation, may release, assign or transfer the capacity or Commonwealth supply, in whole or in part, associated with those contracts to licensed NGSs or large commercial or industrial customers on its system.

* * * * *

(3) A release, assignment or transfer [**must be based upon the applicable contract rate for**] of capacity or Pennsylvania supply [**and**] shall be subject to applicable contractual arrangements and tariffs. **Capacity or Pennsylvania supply costs shall be charged to all customers as a non-bypassable charge based on the average contract rate for those services.**

II. *Capacity Assignment From All Assets*

The general principle governing capacity release is that the asset needed to serve the customer should migrate with the customer (often referred to as "slice of the pie"). While all NGDCs release capacity to the NGSs, there is a difference between what assets are released from NGDC to NGDC. For instance, it is understandable that control of liquefied natural gas (LNG) plants cannot be offered to NGSs as a piece of released capacity. NGSs are also unable to use those storage assets that are designated as "7C" contracts.⁸ These assets are legacy bundled services with restrictions that do not enable NGDCs to give control of a portion of the capacity to NGSs (i.e., the asset needs to remain a single bundled service and parceling it out would require the contract to be renegotiated at today's terms). Finally, another example where an asset may not follow the "slice of the pie" approach is critical capacity or capacity viewed by the NGDC as vital to the reliability and integrity of the system.

⁷ Peoples Natural Gas Company LLC Rates and Rules Governing the Furnishing of Service to Natural Gas Suppliers Third Revised Page No. 20.

⁸ "7C" refers to Section 7(c) of the federal Natural Gas Act, 15 U.S.C. § 717f(c) regarding facilities "grandfathered" before FERC Order No. 636 unbundled service. See Paul W. Parfomak, Interstate Natural Gas Pipelines: Process and Timing of FERC Permit Application Review 1 (Congressional Research Service Report R43138, January 16, 2015), which can be found at <https://www.fas.org/sgp/crs/misc/R43138.pdf>.

⁶ The elimination of the Migration Rider in accordance with Section 1307(f) of the Public Utility Code, 66 Pa.C.S. § 1307(f), eliminates mechanisms to recover these types of costs from shopping customers.

Some NGDCs have developed techniques to work around these restrictions to uphold the general “slice of the pie” approach. For instance, some operators of LNG facilities give NGSs the ability to provide “make up gas” during the summer to compensate the NGDC for when LNG is used to balance NGS load. Another method is to create virtual storage, where the NGS has access to storage in “7C” contracts in concept, but has no physical access to the asset.⁹ The NGS can then use the “7C” asset by providing its intended use to the NGDC. Other options may also be available that will provide similar benefits to NGSs yet address the operational concerns of NGDCs.¹⁰ However, these techniques often do not apply to critical assets and across all NGDCs. There is no requirement that an NGDC release a full representative “slice of the pie” of its assets to NGSs. The only restriction is that NGDCs cannot release the capacity in a way that is discriminatory in price, reliability or functionality. See 52 Pa. Code § 62.225(a)(1). In addition, 52 Pa. Code § 62.225(a)(2) states that, “capacity assets must follow the customers for which the NGDC has procured the capacity, subject only to the NGDC’s valid system reliability and Federal Energy Regulatory Commission constraints.”

Each type of restricted capacity presents a unique condition for the NGDC and the Commission recognizes why these restricted assets cannot follow normal capacity assignment procedures. However, the act of restricting capacity creates a fundamental flaw, even out of necessity, in a competitive marketplace where assets are intended to follow the customer. In response, all NGDCs established features within their service territories to address the necessity for limited access to certain facilities while not providing overly burdensome barriers to competition.

While many NGDCs have created workable programs, some barriers to competition could still exist due to limited access to facilities. While the NGDC is not competing with suppliers, restricted assets like storage do provide a competitive edge that a supplier may not be able to “beat” without similar access to the facility. The Commission of course holds that reliability is a higher priority than competition and always seeks to preserve reliability and many different NGDC created programs have accomplished this task. The question remains is one method or program better than the other? The Commission invites parties to comment on the benefits of any NGDC’s program compensating for limited access to capacity facilities. In the interest of discussion, the Commission offers the following proposals.

A. Commission Proposal

The Commission recognizes that physical access to certain facilities may raise reliability and/or operational problems for NGDCs and their customers. Therefore, virtual access to the asset may be the best option to provide NGSs with the ability to utilize and benefit from the asset but still provides overall control to the NGDC for reliability assurance. This type of access also should not violate FERC rules or other operational or reliability constraints. The NGS receives a portion of the restricted asset in accordance with the “slice of the pie” approach to capacity release. However, any use of this restricted asset must be first communicated to and approved by the NGDC before the NGDC acts upon the NGS’s request. Ideally, the determining factors for approval or denial of a request would be provided in pre-established rules. For

⁹ The NGDC uses the storage asset to balance load, with a requirement that the NGS, at some point in time, supply additional gas to fill the storage.

¹⁰ Storage is often used as a balancing agent.

instance, critical capacity could be used as the NGS saw fit during non-peak times but must be utilized to serve NGDC system customers during operational flow orders or during periods below a certain degree day. Similarly, storage assets could be used provided the NGS maintains a certain storage level consistent with the NGDCs normal withdrawal plan. Also, if any NGS action would cause an imbalance on the distribution system because of use outside the system, it could be denied unless a partner NGS can correct the imbalance. Increased communication is likely needed.

B. Benefit to Market

By allowing all assets equal access to the market, shopping customers and competition should benefit. If designed properly, there would be no impact to non-shopping customers or system reliability. We invite parties to provide the ideal controls for these restricted assets to follow the customer in a virtual sense.

The proposed additions to the regulation at 52 Pa. Code § 62.225(a)(2) are:

§ 62.225. Release, assignment or transfer of capacity.

(a) An NGDC holding contracts for firm storage or transportation capacity, including gas supply contracts with Commonwealth producers, or a city natural gas distribution operation, may release, assign or transfer the capacity or Commonwealth supply, in whole or in part, associated with those contracts to licensed NGSs or large commercial or industrial customers on its system.

* * * * *

(2) A release of an NGDC’s pipeline and storage capacity assets must follow the customers for which the NGDC has procured the capacity, subject only to the NGDC’s valid system reliability and Federal Energy Regulatory Commission constraints. **When release must be restricted due to reliability or other constraints, an NGDC shall develop a mechanism that provides proxy or virtual access to the assets.**

III. Imbalance Trading

Penalties help ensure safe and reliable service in the natural gas market. While system reliability may be the primary mission of the NGDC, it is also a major focus of most market participants. In addition, it requires a cooperative approach between all market participants to ensure reliability. Improving upon this cooperative approach, therefore, should help to improve reliability in the natural gas market.

There are key differences between the design of Choice and Transportation programs at all NGDCs but both programs have penalty provisions for NGS under and over delivery. During the Retail Market Investigation stakeholder teleconferences, stakeholders expressed a concern that the NGDCs’ Choice programs experience minor imbalances subject to penalties. Similarly, many Transportation programs have provisions like tolerance bands that give the NGSs flexibility and aid in avoiding penalties. In addition, some NGDCs allow imbalance trading between NGSs with certain requirements or stipulations for these transactions. Furthermore, trading can occur on FERC jurisdictional interstate pipelines, which creates the ability for NGSs to perform upstream imbalance trading. All these programs provide the framework for NGSs to mitigate penalties or otherwise limit the impact from daily imbalances.

A. *Benefits to the Market*

During discussions on Retail Market Investigation stakeholder teleconferences, some stakeholders raised concerns about the limited communication and the lack of real time information provided by NGDCs to NGSs. Due to this limited communication, there may be occasions where a mistake in nomination may not be identified until later in the process, when a penalty would be assessed on the NGS. It may also eliminate the opportunity for an NGS to correct the incorrect nomination by utilizing the upstream imbalance trading market. While this kind of incident may not occur frequently, it does highlight a potential market obstacle and, more significantly, system reliability concerns. If penalties are necessary to ensure system reliability, so should real-time or near real-time communication on the accuracy of nominations be necessary to ensure system reliability. Therefore, imbalance trading at the NGDC level (i.e., non-FERC jurisdictional) and between Choice and Transportation programs could provide the market with a tool to help ensure reliability while simultaneously providing an opportunity to allow NGSs to avoid a penalty if a satisfactory solution can be implemented.

B. *Commission Proposal*

The Commission proposes that imbalance trading between market participants (both Choice and Transportation customers) should be a market feature. For some systems, this change may require information technology upgrades as well as increased real-time communication. It is also possible that other provisions within an NGDC's program may need to change to accommodate imbalance trading between Choice and Transportation programs, such as mismatches in tolerance bands or penalty structures. While these changes and concerns should be highlighted, emphasis should also be placed on provisions that would customize imbalance trading for each participant. It's important to note that all NGDCs already allow for some imbalance trading with the NGDC. For example, some NGDCs have mechanisms where NGSs provide extra gas during the summer months to make-up when LNG is used during the winter. Expanding options for market participants, coupled with real-time information could further optimize the market for all market participants.

For imbalance trading to work, real-time information between all market participants becomes more important. The current communication mechanisms NGDCs have already established might be sufficient; however, the Commission is interested in parties providing examples or conditions where additional communication could improve the market, particularly, communications practices that facilitate or complicate imbalance trading at the NGDC level. As imbalance trading will need certain real-time information, the NGDC's electronic bulletin board could possibly serve as a general trading hub for each distribution system, with enhancements to fulfill this role.

For purposes of this proposal, the Commission is focused on daily imbalances and not month-end cash-ins/outs. However, commenters are invited to mention any impact this daily imbalance trading and communications proposal can have on the month-end mechanism.

C. *Proposed Regulation*

To implement this daily imbalance trading, the Commission proposes the following additions to the regulation at 52 PA Code 62.225:

(5) An NGDC shall provide the opportunity for imbalance trading on the day the imbalance occurred. Capacity may be traded between market participants provided that either:

- (i) The trade improves the position of both parties.
- (ii) The trade improves the position of one party and is agreed to by the second party but does not negatively impact the second party's imbalance.

IV. *Penalty Structure During Non-peak Times*

Penalties are a necessary market feature to help maintain system integrity and reliability. In Pennsylvania and within each NGDC, there is a difference in penalty structure during system peak demand periods and off-peak demand periods. Generally, system peak demand periods occur during the winter months (November through March) or when an operational flow order (OFO) is issued. Penalties are appropriately higher during system peak demand periods because the harm to system reliability could be substantial. The system peak demand period penalties were not discussed in great detail and were not the focus of the Retail Market Investigation. Instead, the Retail Market Investigation stakeholders explored standardizing the penalty structure during off-peak periods. During these non-peak periods, some NGDCs set penalties at a static and specific level (i.e., \$x.xx per volume of gas), while others use the market price of gas and multiply it by some penalty level.

During the Retail Market Investigation stakeholder discussions, concerns were raised about the fairness of certain penalties during these off-peak periods and corresponding questions about whether the penalties were sufficient to prevent inappropriate market behavior. The Commission recognizes that there are differences in gas costs, predominately due to capacity, storage, access to production, etc. between NGDCs. Still, we think that a standardized penalty mechanism across Pennsylvania that is both fair and adequate is needed to reduce barriers to participation in the retail natural gas market.

A. *Benefits to the Market*

We are concerned that using static penalty amounts risks creating an inflexible and at times inaccurate reflection of the market as the penalty may be inadequate or overly burdensome. Instead, a market-based, standardized penalty structure for off-peak periods could provide greater transparency and predictability. Such a mechanism would also allow all market participants to quantify risk across any or all operations within the Commonwealth subject only to that system's market based cost of gas. A standardized penalty structure may also persuade NGSs to enter new markets, offer additional products or generate increased competition as the penalty structure is consistent regardless of which NGDC the NGS is operating in. Ultimately, a clear, market-based penalty structure may allow local producers, standby customers, or other non-traditional market participants to offer unique options to balance the system, particularly when coupled with imbalance trading.

B. *Commission Proposal*

The Commission proposes that all NGDCs establish penalties during system off-peak periods based upon its local gas costs. For this, the NGDC could propose a local hub or utilize a system average cost as its base market price for natural gas. From there, a straight multiplier could be used to generate the penalty. During system off-peak periods, a value of 15% was generally considered as reasonable by some of the stakeholders. While the

multiplier could be a standardized set percentage, the Commission recognizes that a market based formula may offer a more fair and dynamic mechanism to respond to NGDC concerns about inadequate penalty structure and provide for a fairer penalty. For this purpose, UGI's formula approach could provide a template for a market based approach. UGI's penalty formula approach is described its tariff as:

The difference in price between the highest published index price for Texas Eastern M-3 and the lowest published index price for Texas Eastern M-2, as published in Platts' Gas Daily on the table "Daily Price Survey", but shall not be lower than \$0.25/per Dth, applied to the difference between the DDR and the delivered volumes, plus all incremental costs incurred by Company as a result of the failure to deliver the DDR.¹¹

Overall, during system off-peak periods, an NGDC often has more flexibility to address imbalances and therefore, the imbalance is less likely to cause reliability problems. However, this lack of impact to reliability does not absolve market participants from their obligation to meet their customers' requirements. As the market moves and fluctuates, a formula-based penalty also fluctuates. While static penalties have their place, the Commission posits that a minimum penalty, like the one found in UGI's penalty structure above, is needed and invites parties to comment on the need for such a penalty structure. In fact, many NGDCs already have "no penalty" clauses within their tariffs and waive penalties under certain circumstances. For instance, UGI's tariff states that "The Company may not charge for delivering in excess or under of the DDR if the over-delivery or under-delivery is anticipated to benefit the distribution system's daily balancing position as determined by the Company in its sole discretion."¹²

Ultimately, UGI's provision aims at improving reliability within their system and highlights circumstances when penalties should not be imposed. While NGDCs might waive a penalty if an NGS helped to stabilize reliability, we propose that these conditions should be explicitly stated within the Company's tariffs. For this reason, the Commission proposes that language similar to UGI's be added to all NGDC supplier tariffs. In addition, the Commission proposes that all penalties should be structured based upon market conditions similar to that found in UGI's tariff.

In cases where NGDCs waive penalties, the NGS is usually found to be aiding the NGDC unintentionally. However, there are times when an NGS responds to an NGDC's call for help. In these situations, the Commission invites parties to comment on whether NGSs who intentionally "help" an NGDC correct an imbalance should be rewarded (market cost of gas plus a portion of the penalties levied) if a penalty was levied on a different entity(s) who caused the imbalance. The Commission also invites comment on whether to require an NGDC to exempt an NGS from any penalty where the NGS's imbalance benefits the distribution system's daily balancing position.

C. Proposed Regulations

To implement this proposed standard penalty provision, the Commission proposes the following additions to the regulation at 52 PA Code 62.225:

(6) Penalties during system off-peak periods must correspond to market conditions.

(i) An NGDC shall use the system average cost of gas as the reference point for market based penalties. If an NGDC takes service from a local hub, it may use the local hub as a reference point for market based penalties.

(ii) The lowest penalty must be set at the market price.

Conclusion

The Natural Gas Retail Markets Investigation working group deliberated extensively on these natural gas operational issues. We believe now is the time to move forward with specific proposals to revise the relevant regulations. We are moving deliberately and cautiously—acknowledging that our actions must not threaten the integrity and reliability of the natural gas distribution system. However, we believe improvements to the market can be accomplished without impacting system integrity and that our proposals do just that. Throughout this order we discuss various issues and carefully propose new rules to bring greater transparency, predictability, and equity to the markets—with the objective of creating a more robust competitive market with more options for consumers.

We invite parties to comment on all the matters discussed in this order and on any other related matter that they think we may have overlooked. We urge parties to submit, along with their comments, any data they may have to support their position. This includes any cost data, along with cost data for any alternatives they may propose. Where parties oppose the proposed regulations, we encourage them to offer alternative solutions.

Upon careful review and consideration of the comments received in response to this Advance Notice of Proposed Rulemaking, the Commission intends to issue a formal Notice of Proposed Rulemaking with proposed revised regulations; *Therefore,*

It Is Ordered That:

1. The Secretary shall duly certify this Order and deposit it with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*.

2. Written comments referencing Docket No. L-2017-2619223 be submitted within 45 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P.O. Box 3265, Harrisburg, PA 17105-3265. Comments may also be filed electronically through the Commission's e-File System.

3. This Order proposing to revise the regulations appearing in Title 52 of the *Pennsylvania Code* Chapter 62 (relating to Natural Gas Supply Customer Choice), be served on all jurisdictional natural gas utilities, all licensed natural gas suppliers, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate.

4. The Office of Competitive Market Oversight shall electronically send a copy of this Order to all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity; and to all persons on the contact list for the Investigation of Pennsylvania's Retail Natural Gas Market at Docket No. I-2013-2381742.

5. A copy of this Order shall be posted on the Commission's website at the Office of Competitive Market Oversight web page and on the web page for the Retail Markets Investigation—Natural Gas.

¹¹ UGI Gas Tariff Original Page 111.

¹² UGI Gas Tariff Original Page 111.

6. The contact persons for this matter are Nathan Paul, Bureau of Audits (717) 214-8249, npaul@pa.gov; and Kriss Brown in the Law Bureau (717) 787-4518, kribrown@pa.gov.

ROSEMARY CHIAVETTA,
Secretary

Statement of Chairperson Gladys M. Brown

Before the Commission is the Advance Notice of Proposed Rulemaking (ANOPR) pertaining to the Commission's regulations at 52 Pa. Code § 62.225. This ANOPR, inter alia, proposes modifications to the manner and protocol in which natural gas distribution companies (NGDCs) recover the costs for capacity. Here the Commission proposes to have NGDCs recover capacity costs from all customers, regardless of shopping status, on a non-bypassable basis. I encourage parties, to the extent

interested, to comment on any potential implementation challenges that may arise from this proposal and any appropriate courses of action to overcome such implementation challenges.

I am pleased to propose these steps as a continuation of the efforts commenced under the Commission's Natural Gas—Retail Markets Investigation. I am cognizant these proposed changes represent a significant change in NGDC operations. As such, I support the use of the ANOPR process in effort to thoroughly deliberate the proposals included in this proceeding. I look forward to reviewing all comments.

GLADYS M. BROWN,
Chairperson

[Pa.B. Doc. No. 17-1520. Filed for public inspection September 15, 2017, 9:00 a.m.]
